



ILLINOIS WORKERS' COMPENSATION COMMISSION

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CHRONOLOGY OF WORKERS' COMPENSATION LEGISLATION IN ILLINOIS

- 1884 The first workers' compensation laws originated in Germany with a system of accident insurance covering all employees in manufacturing, mining, and transportation. Similar laws passed in Austria in 1887, Norway in 1894, and Finland in 1895. Great Britain's law in 1897 was the prototype for U.S. laws.
- 1902 Maryland passed the first act in the United States, which was restricted to death cases.
- 1909 A disastrous mine fire in Cherry, Illinois killed 259 people and provided the impetus for worker safety and workers' compensation legislation. In a special session, the legislature created a commission to study and recommend the best way to compensate for industrial accidents.
- 1910 The Employers' Liability Commission surveyed 1,200 employers, 1,700 labor organizations, 200 judges and lawyers, as well as Americans living in foreign countries.
- The group researched 5,000 accidents. Of the 506 fatal accidents, they found that 40% of the families received nothing (a national study of injuries claimed that in 88% of the cases, workers received nothing); seldom did a family receive benefits in less than three years; and for every dollar an employer paid for liability insurance, only 25¢ reached the injured worker.
- The group called for a compensation measure that blocked common law suits and ensured more prompt and fair compensation.
- 1912 Illinois' first workers' compensation law took effect May 1, 1912. It applied only to certain hazardous industries: mines, construction, electrical work, etc.
- 1913 The courts had declared the 1912 act invalid, so the legislature replaced it with a new one that was upheld by the Illinois Supreme Court.
- Because the courts had been flooded with new workers' compensation cases, the legislature also created a three-member Industrial Board to handle the cases.
- 1917 The legislature created a five-member Industrial Commission within the Illinois Department of Labor under the Illinois Civil Administration Code.
- Several lawsuits challenged the constitutionality of compulsory workers' compensation laws. After the U.S. Supreme Court upheld the law, the legislature mandated coverage for extra-hazardous occupations.
- 1948 Workers' compensation laws existed in all U.S. states.

1957 The Commission separated from the Department of Labor and became a self-standing agency. The Occupational Diseases Act became mandatory.

1970 Congress passed the Occupational Safety and Health Act (OSHA). It also created a national commission to study workers' compensation systems across the country and recommend improvements.

At the time, workers' compensation benefits were widely considered to be inadequate. In more than half the states, the maximum benefit for a temporary total disability was below the poverty level for a family of four.

Later, the group issued 84 recommendations concerning the coverage of employees and diseases, income protection, medical care, worker safety, and program administration.

1975 Illinois responded to the national commission's recommendations by enacting the following:

1. The temporary total disability benefit was set at 66 2/3% of the employee's average weekly wage (AWW), up to 100% of the statewide average weekly wage (SAWW). The minimum benefit increased from \$31.50 per week for a single person to \$100.90 per week or the employee's AWW, whichever is less. The maximum benefit increased from \$100.90 per week for a single person to \$205 per week or 50% of the employee's AWW, whichever is more. The limit on the total number of weeks that may be awarded was removed.
2. The maximum permanent partial disability benefit was set at 66 2/3% of the employee's AWW, up to 100% of the SAWW. The minimum benefit increased from \$31.50 per week for a single person to \$80.90 per week or the employee's AWW, whichever is less. The maximum benefit increased from \$80.90 per week for a single person to \$205 per week or 50% of the employee's AWW, whichever is more.
3. The maximum death benefit was set at 66 2/3% of the employee's AWW, up to 100% of the SAWW, for the lifetime of the surviving spouse. The law also provided that the death benefit should never be less than 50% of the employee's AWW.
4. The statute of limitations was changed to require filing a case within three years of the accident or two years from the date of last payment. Before 1975, employees had to file a claim within one year of the date of the accident or the date of last payment.
5. In recognition of the time-value of money, the legislature authorized interest payments for certain cases on appeal from the date the arbitration decision was issued to the date the monies were paid.
6. To offset the effects of inflation, the Rate Adjustment Fund was created to provide cost-of-living increases to individuals who were totally and permanently disabled or the survivors of fatally injured workers.
7. It became illegal for an employer to fire an employee for filing a workers' compensation claim.
8. Before 1975, employees could not choose the doctors who treated them for their work-related injuries. This was changed to allow employees the unlimited choice of provider. It also assigned the employer responsibility for the cost of rehabilitation.
9. A new disability category--"man as a whole"--was created in Section 8(d)(2) of the law that allows the Commission to make awards based on the percentage of loss of the whole person, as opposed to losses of specific parts of the body.

1976 The legislature deleted the provision that allowed high wage earners to receive 50% of their weekly wages without an upper limit. Instead, the maximum benefit for all employees became 66 2/3% of the employee's AWW, up to 100% of the SAWW.

- 1977 The legislature changed the death benefit from a lifetime benefit to 20 years of weekly benefits or \$250,000, whichever is greater. It also increased the maximum benefit level from 100% to 133 1/3% of the SAWW for TTD, PTD, and death benefits.
- 1980 In response to backlogs that began with the 1975 expansion of the program, the legislature approved a significant increase in the Commission's appropriations and staff.
The legislature also cancelled until 1984 the semi-annual cost-of-living increases that are tied to increases in the SAWW.
- 1981 The legislature limited the employee's choice of provider to two providers.
It also directed arbitrators and commissioners to provide full written decisions with findings of fact and conclusions of law.
- 1982 The legislature allowed insurance carriers to set their own premium rates for workers' compensation insurance. Previously, they had to obtain approval from the Department of Insurance. The law also prohibited carriers from agreeing to adhere to an established price structure. (Effective January 1, 1983)
- 1983 Due to budget cuts, the Commission eliminated the Insurance Compliance Program, which tried to ensure that employers met their legal obligation to obtain w.c. insurance.
- 1984 The legislature made the following changes:
1. It created an emergency process (Section 19(b-1)) for claimants who are not receiving TTD or medical benefits. The law mandated that emergency decisions shall be issued within 180 days.
 2. It created the Commission Review Board to investigate complaints concerning arbitrators and commissioners, and make recommendations to the governor.
 3. It reduced permanent partial disability benefits from 66 2/3% to 60% of the employee's AWW. PPD benefits were frozen at \$293.61/week until 1988.
- 1985 The legislature ordered the Commission to issue decisions within 60 days of oral arguments.
It also created the Self-Insurers Advisory Board to oversee the review of applications for self-insurance and the general administration of the law.
- 1986 The National Council on Compensation Insurance took responsibility for keeping employers' records of insurance.
- 1989 Business and labor groups jointly supported corrective legislation that made the following changes:
1. It acknowledged the Commission's long-standing shortage of resources, and authorized additional staff and funding.
 2. It established minimum qualifications for commissioners, established six-year terms for arbitrators, mandated training programs, and established the chairman as the chief executive officer of the Commission.
 3. It created a temporary panel of commissioners to eliminate a backlog of over 1,700 cases at the oral argument level (4/90 – 10/91). It also authorized arbitrators to serve as acting commissioners when vacancies occur.
 4. To expedite the resolution of cases, the law prohibited parties from introducing additional evidence at the review level.
 5. It created the Workers' Compensation Advisory Board, consisting of nine representatives from the employer, employee, and public communities, to assist the Commission in formulating goals and policies.

6. It authorized the Commission to penalize employers that knowingly fail to obtain insurance coverage or to make payments into the Rate Adjustment or Second Injury funds.
- 1991 The legislature increased the funeral benefit for fatally injured workers from \$1,750 to \$4,200, effective July 1, 1992.
- It also made it illegal for an employer to inquire whether job applicants have ever filed for workers' compensation or received benefits.
- 1995 The legislature repealed the 1907 Structural Work Act, which had allowed workers injured in construction accidents to seek relief under both workers' compensation and in court.
- 1996 The legislature increased the assessment levels paid by insurers and self-insured employers to the Rate Adjustment Fund, which provides cost-of-living benefits to 1,500 people who are either permanently and totally disabled or the survivors of fatally injured workers. The fund had experienced shortfalls for the previous nine years. At this point, the Commission started borrowing money from the General Revenue Fund in order to pay RAF benefits.
- The Commission reconstituted the Insurance Compliance Program, to make sure that all employers have workers' compensation insurance, as required by law.
- 1997 The legislature stated that employers in building and construction, and certain group self-insurers, must pay workers' compensation insurance premiums based on the rates in Illinois where the work is located. The intent is to eliminate the competitive advantage held, for example, by an Indiana contractor paying the lower Indiana insurance rates and bidding for a job in Illinois against Illinois contractors.
- 1999 The language allowing corporate officers of small businesses to opt out of the workers' compensation program was changed to allow *any* corporate officer this option. Members of a limited liability company may opt out as well.
- The legislature also clarified that general contractors and their subcontractors are included in employers' legal responsibility to pay workers' compensation.
- 2001 Because the Department of Insurance regulates group self-insurance pools, the legislature transferred the Group Self-Insurers Insolvency Fund from the Commission to DOI, effective January 1, 2001, and renamed it the Workers' Compensation Pool Insolvency Fund. Both agencies supported this change.
- The legislature also stated that parties may enter into lump-sum settlement agreements in PPD or PTD cases that prorate the amount over the life expectancy of the injured worker. This change codified existing practice and was designed to avoid confusion regarding the offset of Social Security benefits by workers' compensation benefits.
- Effective August 9, 2001, employers that do not obey the law requiring them to insure for their workers' compensation liabilities are subject to a minimum fine of \$10,000.
- 2002 The legislature authorized a new district office, which opened in Collinsville in Fall 2002.
- 2003 The legislature and governor established an independent source of funding for the Commission, making Illinois the 46th state to pay for its workers' compensation agency through a dedicated, non-GRF source. The assessment enabled the Commission to hire more arbitrators and reduce arbitrators' caseloads. (SB2207, PA93-840)

- 2005 Effective January 1, the agency's name changed to the Illinois Workers' Compensation Commission. On July 20, the governor signed HB2137 into law (PA94—0277). The legislature later made some changes to these measures in SB1283 (PA94—0695). The final result included the following provisions:
1. It directed the Commission to create the first w.c. medical fee schedule, effective for treatments on or after 2/1/06, and it created a W.C. Medical Fee Advisory Board to advise the Commission.
 2. It created the first ban on balance billing by barring an medical provider from seeking payment of outstanding medical bills from a worker who informs the provider that his or her case is pending at the Commission.
 3. It increased the number of commissioners from seven to 10.
 4. It increased the number of members on the Workers' Compensation Advisory Board from nine to 12 (six represent the employer and six represent the employee).
 5. It increased the employers' contribution level to the Rate Adjustment Fund, and provided for the fund's eventual dissolution by stating that all subsequent cost-of-living benefits shall be paid directly by the employer.
 6. It provided that the Commission shall issue decisions within 180 days from the date the *Petition for Review* was filed for all expedited cases filed under Section 19(b) of the Act that involve 12+ weeks of TTD. It also authorized employers and insurers to ask for expedited hearings in certain situations.
 7. It stated arbitrators must write full written decisions only if requested by a party.
 8. It created fraud penalties and created a fraud unit within the Division of Insurance. Workers who are convicted of fraud shall become ineligible for w.c. benefits; anyone who is convicted of fraud may be found guilty of a felony and/or civilly liable for 2-3 times the benefits in question.
 9. It strengthened the Commission's ability to enforce the law requiring employers to have w.c. insurance. An uninsured employer may be shut down and/or lose its exclusive remedy protection under the Act. Penalties collected from uninsured employers are dedicated to paying the benefits of injured employees.
 10. It increased minimum TTD and PPD benefits and indexed benefits to the minimum wage; it increased disfigurement and scheduled PPD benefits by 7½%; it increased the burial benefit from \$4,200 to \$8,000; and it created TPD benefits and defined maintenance benefits for the first time.



Illinois Workers' Compensation Commission

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Summary of Workers' Compensation Legislation--2011

The General Assembly recently passed significant Workers' Compensation reform legislation (HB1698), which the Governor signed to enact PA 97-0018. Below is a summary of the major provisions of the legislation. The Act became effective immediately upon the signature of the Governor however some provisions become effective on later dates. There is also a single reference to SB1147 which also passed the General Assembly and awaits the Governor's approval.

Operation of the Commission

- Codifies the current administrative rule specifying that Arbitrators and Commissioners of the IWCC are subject to the Code of Judicial Conduct.
- Provides that terms of all Arbitrators are terminated as of the end of business on July 1, 2011. Current Arbitrators continue to serve until they or their successors are appointed.
- Provides that the Governor shall appoint all Arbitrators, subject to advice and consent of the Senate, for the initial terms immediately after the effective date of the Act. The Governor shall request recommendations from Workers' Compensation Advisory Board regarding appointing these Arbitrators, which the Board may provide. These appointments shall be staggered between 1, 2, and 3 year terms. Thereafter, Arbitrators are appointed for 3-year terms by the full Commission. The Governor's appointing authority supersedes provisions of the Personnel Code.
- Requires that all new Arbitrators, not currently serving on the effective date of the Act, must be licensed to practice law in Illinois and must keep that status current throughout their term(s) of service.

- Provides that the Chairman shall evaluate the performance of all Arbitrators annually and make recommendations about reappointment of Arbitrators by the full Commission.
- Deletes the provision that Arbitrators are reappointed unless the Chairman recommends that an Arbitrator's term shall not be renewed and 8 Commissioners vote not to renew the Arbitrator's term.
- Requires Arbitrators and Commissioners to take at least 20 hours of training every 2 years while in office regarding professional and ethical standards, detection of fraud, evidence-based medical treatment, and Coal Workers' Pneumoconiosis.
- Requires that at least 3 Arbitrators be assigned to each hearing site and cases must be randomly assigned to them. Arbitrators may not serve more than 2 years of any 3-year term in any single county, other than in Cook.
- Provides that all claims of current or former employees of the IWCC be adjudicated by certified independent Arbitrators not employed by the IWCC. Arbitrators shall be selected by the Chairman from a list generated by the Commission Review Board. Decisions of the independent Arbitrator shall become a decision of the Commission but are subject to judicial review.
- Provides that the terms of members of the Workers' Compensation Advisory Board are terminated immediately and the Governor shall make new appointments within 30 days.

Substantive Amendments

- Codifies that the Petitioner has the burden of proving by a preponderance of evidence that the injuries arose out of and in the course of employment.
- Provides that for accidents on or after 9/1/11, wage differential awards shall be effective only until the petitioner reaches the age of 67 or 5 years after the date of the award becomes final, whichever occurs later.
- Reduces Temporary Partial Disability benefits by using the "gross" rather than "net" amount of income earned from the light duty position.

- Allows employers to establish preferred provider programs (PPP) of medical providers approved by the Department of Insurance. The PPP only applies to cases in which the PPP was already approved and in place at the time of the injury. The employee must be notified of the program on a form promulgated by the IWCC. Employees have 2 choices of treating providers from within the employer's network. If the Commission finds that the second choice of physician within the network has not provided adequate treatment, the employee may choose a physician from outside the network. Employees may opt out of the PPP in writing at any time, but such action constitutes a choice of physicians. If an employee chooses non-emergency treatment prior to the report of an injury, that constitutes a choice of physicians.
- Rolls back the maximum award for the loss of the use of a hand to pre-2006 levels (190 weeks) rather than the current 205 weeks.
- Caps repetitive Carpal Tunnel Syndrome awards to 15% of the loss of the use of a hand unless the petitioner proves greater disability by clear and convincing evidence, at which time the award is capped at 30% loss of the use of the hand.
- Provides that to determine PPD regarding accidents on or after 9/1/11 a physician submitting an impairment report shall use the most recent AMA guidelines on impairment including objective criteria. The level of disability shall be based on that impairment report, the occupation of the petitioner, the age of the petitioner, the future earning capacity of the petitioner, and evidence of disability in the treating providers' medical records. The relevance and weight of factors in addition to the impairment report shall be included in all decisions relating to PPD.
- For accidents on or after 9/1/11, precludes compensation if the employee's intoxication was the proximate cause of his injury or if the employee's level of intoxication was sufficient to constitute a departure from employment. Establishes criteria for testing and sets a presumption of causation because of intoxication at a BAC level of .08, evidence of impairment due to ingestion of cannabis or a controlled substances, or refusal to submit to a test. An employee may rebut the presumption by proving intoxication was

not the proximate or sole cause of the injury by a “preponderance of admissible evidence.”

- SB1147, previously sent to the Governor, precludes compensation to an employee whose injury was caused by actions resulting in a conviction for a forcible felony, aggravated driving under the influence, or reckless homicide if the crime caused the death or serious injury of another. Specifies that attorney fees and penalties shall not be awarded if an employer fails to make timely payments or terminates benefits pending conclusion of a prosecution if the employee has been charged with an offense specified above.

Medical Fee Schedule

- Reduces all current fee schedules by 30% for all treatment performed after 9/1/11, and reduces the current 76% percent of charge default to 53.2%.
- Effective 1/1/12, collapses the current 29 geo zips to 14 zones for hospitals and 4 for physicians and other providers. These zones are based on the boundaries of specified counties.
- Effective 1/1/12 allows the IWCC to update CPT codes and crosswalks based on most recent AMA criteria and to incorporate associated rule changes.
- Effective 1/1/12 allows the IWCC to annually include new procedures in the fee schedule based on non-Medicare relative values and conversion factors.
- Provides that medical implants shall be reimbursed at 25% over invoice price plus actual and customary shipping minus any rebates.
- Specifies that accredited Ambulatory Surgical Care facilities are reimbursed under the schedule as well as licensed Ambulatory Surgical Care Centers.
- Includes physician-dispensed medication to the fee schedule at the average wholesale price plus a dispensing fee of \$4.18.
- Adds dental services to the medical fee schedule.

- Requires payers to inform providers of insufficient information in billing within 30 days and imposes the 1% monthly interest fee after 30 days rather than 60 days.
- Specifies that bills for treatment deemed to be unnecessary or excessive are subject to the prohibition against billing to the injured employees.
- Requires the Department of Insurance to establish rules for electronic billing for all medical bills by 1/1/12 which must be accepted by all employers/insurers by 6/30/12.
- Provides that out-of-state services be paid at the lesser rate of that state's medical fee schedule or the fee schedule in effect for employee's residence.

Utilization Review (applies to treatment provided on or after 9/1/11)

- Requires providers to submit to reasonable written UR requests, and to make reasonable efforts to submit timely and complete reports to support a request for certification of requested treatment. If such reasonable efforts are not made, the charges may not be compensable or collectable.
- Requires that written notices of certification and non-certification of requested treatment, including evidence-based guidelines, shall be furnished to the provider and employee.
- Provides that an employer or its agent can only deny requested medical treatment because that the treatment is excessive or unnecessary based on a valid UR report.
- Provides that if an employer or its agent refuses to pay for services based on a legitimate UR review, the petitioner has the burden of establishing that variance with the guidelines are warranted in the particular situation.
- Requires a physician performing UR to be available for deposition in this state either in person or through telephonic communication. The cost of such depositions shall be borne by the employer/insurer.
- Requires UR reports be addressed in any written decision.

Insurance Compliance

- Provides that all Employee Leasing Companies provide the IWCC names of all clients that are named under their WC insurance and copies of the certificates of insurance naming such clients.
- Allows an investigator with the insurance compliance division of the IWCC to issue citations between \$500 and \$2,500 against employers who are in noncompliance. The employer must pay the fine and provide proof of insurance within 10 days of the citation. Failure to comply with this provision would be a basis for instituting an official non-compliance action with the Commission at which time a minimum \$10,000 fine may be imposed.

Fraud

- Provides that the Department of Insurance has authority to subpoena medical records pursuant to an investigation of fraud and amends the Code of Civil Procedure to specify that physicians may disclose medical records pursuant to such a subpoena.
- Eliminates the requirement that a report of fraud shall be forwarded to the alleged wrongdoer with the verified name and address of the complainant.
- Provides that all reports of fraud not forwarded for prosecution shall be destroyed after the statute of limitations has run on the reported actions.
- Specifies that intentional submission of medical bills for services not rendered constitutes WC fraud.
- Requires the fraud unit to refer any violation to the Special Prosecution Bureau of the Office of the Attorney General.
- Sets penalties for WC fraud based on the amount of money involved in the attempted fraud, from a Class A misdemeanor (less than \$300) to a Class 1 felony (more than \$100,000). Requires restitution be ordered in WC fraud cases.

- The fraud unit shall procure software to identify waste and fraud, and shall make annual reports on instances of fraud and prosecution to the General Assembly, Governor, Director of Insurance, and Chairman of the IWCC.

Miscellaneous

- Allows the Director of Central Management Services (“CMS”) to implement a system including purchasing workers’ compensation insurance and/or hiring a third party administrator to administer claims of state employees.
- Establishes the State Workers’ Compensation Program Advisory Board within CMS to review, assess, the workers’ compensation program involving state employees, and to advise CMS regarding improvements to the system. The board shall consist of 5 voting members, one appointed by the Governor who serves as Chairman, and one each by the four legislative leaders. The board also includes non-voting *ex officio* members consisting of the Chairman/Director/Secretary, or their designees, of CMS, the Attorney General, Department of Insurance, Department of Transportation, Department of Corrections, Department of Human Services, Department of Revenue, and the IWCC. They shall meet at least thrice annually and submit an annual written report to the Governor, General Assembly, and CMS with recommendations for improving the system.
- Establishes a pilot program for collectively bargained workers’ compensation alternative dispute resolution involving 2 unions designated by the Department of Labor and employers in the construction industry. Certain elements must be in the agreements which must be approved by the Chairman of IWCC. An approved plan shall be recognized as legally binding by the Commission and the Courts. A rejection of an agreement by the Chairman is subject to judicial review. Plan administrators must report all relevant information about claims and awards annually.
- Provides that employers shall pay the full negotiated rate for medical services even if the provider has sold his/her interest for a lesser amount.
- Prohibits commissions or gifts from attorneys practicing before the Commission and clients for referrals. The prohibition does not include splitting fees among attorneys or food or refreshment consumed on the premises or catered not exceeding \$75 per day. Violation is a Class A misdemeanor.

- Provides that the Director of Insurance shall direct entities recommending WC premium rates (NCCI) to recalculate their proposed rates based on the reform legislation by 9/1/11.
- Requires the Director of Insurance to submit extensive annual reports to the General Assembly, Governor, and the Chairman of the IWCC about work accidents, all aspects of the WC insurance market in Illinois, and numerous other matters relating to claims, awards, and medical expenditures. The legislation specifies 34 specific areas the report must address.